

APPEAL NO. 021113
FILED MAY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 12, 2002, with the record closing on March 20, 2002. In a consolidated hearing involving a 1995 compensable injury and an alleged 2001 injury, the hearing officer determined that the appellant's (claimant) _____, compensable (low back) injury includes and extends to include a recurrent disc herniation at L4-5; that the claimant did not sustain a new compensable low back injury on _____; that carrier 2 is relieved of liability pursuant to Section 409.002 because the claimant failed to timely give notice of his _____, injury to his employer pursuant to Section 409.001 and did not have good cause for failing to do so; and that the claimant had disability from March 19, 2001, through March 21, 2001, and from June 9, 2001, through the date of the CCH due to the 1995 injury.

The claimant appeals, contending that he had timely reported his 2001 alleged injury and that he had sustained a new injury in 2001.

Carrier 1 files a "response" to the claimant's appeal asserting that the claimant's "recurrent disk herniation at L4-5 was not as a result of the compensable injury of _____"; that the claimant sustained a new injury in 2001; and that the claimant timely reported his new injury. Carrier 1's prayer is that the Appeals Panel reverse the hearing officer's decision. Carrier 1's pleading is timely as a response but since records of the Texas Workers' Compensation Commission (Commission) show that carrier 1 received the hearing officer's decision on April 10, 2002, and carrier 1's pleading was received by the Commission on May 8, 2002, it is not timely as an appeal. See Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)).

Carrier 2 files a response urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a "compensable disc bulge/herniation injury at L4-L-5" on _____. It is undisputed that the claimant had spinal surgery in November 1996; that the claimant was released to return to light duty in March 1997; and that by October 1997 had been released to full duty. The claimant was certified to have reached maximum medical improvement on June 19, 1997. This injury was covered by carrier 1. Between 1997 and March 2001, the claimant continued to work with the same group of people, but the employer companies split and reformed with some variances and while the claimant was working with some of the same people in January 2001 he began work for another company insured by carrier 2.

The claimant contends that he sustained a new low back injury on _____, while driving a front-end loader and that he reported the injury to his superintendent (denied by the superintendent) and the employer's office manager (denied by the office manager). There was conflicting evidence as to whether this was a recurrence of the claimant's 1995 injury or was a new injury and whether the claimant had merely complained of back pain or had reported a new injury. The hearing officer has a detailed Statement of the Evidence and extensive findings of fact. The hearing officer is the sole judge of the weight and credibility to be given to the evidence and her determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the hearing officer's decision and order are affirmed.

The following information was provided at the CCH.

The true corporate name of carrier 1 is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Commercial Compensation Insurance Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

The true corporate name of carrier 2 is **FIRST AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES W. FISHER
8111 LBJ FREEWAY
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge